



# House of Representatives

General Assembly

**File No. 839**

*January Session, 2007*

Substitute House Bill No. 5975

*House of Representatives, May 16, 2007*

The Committee on Appropriations reported through REP. MERRILL of the 54th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT CONCERNING THE STATE SET-ASIDE PROGRAM AND DISPARITIES IN MINORITY CONTRACTING.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4a-60g of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2007*):

3 (a) As used in this section and sections 4a-60h to 4a-60j, inclusive,  
4 the following terms have the following meanings:

5 (1) "Small contractor" means any contractor, subcontractor,  
6 manufacturer or service company (A) [which] that has been doing  
7 business under the same ownership [and] or management and has  
8 maintained its principal place of business in the state, for a period of at  
9 least one year immediately prior to the date of application for  
10 certification under this section, (B) [which] that had gross revenues not  
11 exceeding [ten] fifteen million dollars in the most recently completed  
12 fiscal year prior to such application and, on or after July 1, 2008,  
13 regardless of whether such contractor had gross revenues not

14 exceeding fifteen million dollars in the most recently completed fiscal  
15 year prior to such application, that meets the size standard established  
16 by the Commissioner of Administrative Services pursuant to section 2  
17 of this act, for the business sector in which such contractor,  
18 subcontractor, manufacturer or service company primarily operates,  
19 and (C) at least fifty-one per cent of the ownership of which is held by  
20 a person or persons who exercise operational authority over the daily  
21 affairs of the business and have the power to direct the management  
22 and policies and receive the beneficial interests of the business, except  
23 that a nonprofit corporation shall be construed to be a small contractor  
24 if such nonprofit corporation meets the requirements of subparagraphs  
25 (A) and (B) of this subdivision.

26 (2) "State agency" means each state board, commission, department,  
27 office, institution, council or other agency with the power to contract  
28 for goods or services itself or through its head.

29 (3) "Minority business enterprise" means any small contractor (A)  
30 fifty-one per cent or more of the capital stock, if any, or assets of which  
31 are owned by a person or persons (i) who exercise operational  
32 authority over the daily affairs of the enterprise, (ii) who have the  
33 power to direct the management and policies and receive the beneficial  
34 interest of the enterprise, and (iii) who are members of a minority, as  
35 such term is defined in subsection (a) of section 32-9n, (B) who is an  
36 individual with a disability, or (C) which is a nonprofit corporation in  
37 which fifty-one per cent or more of the persons who (i) exercise  
38 operational authority over the enterprise, and (ii) have the power to  
39 direct the management and policies of the enterprise are members of a  
40 minority, as defined in this subsection, or are individuals with a  
41 disability.

42 (4) "Affiliated" means the relationship in which a person directly, or  
43 indirectly through one or more intermediaries, controls, is controlled  
44 by or is under common control with another person.

45 (5) "Control" means the power to direct or cause the direction of the  
46 management and policies of any person, whether through the

47 ownership of voting securities, by contract or through any other direct  
48 or indirect means. Control shall be presumed to exist if any person,  
49 directly or indirectly, owns, controls, holds with the power to vote, or  
50 holds proxies representing, twenty per cent or more of any voting  
51 securities of another person.

52 (6) "Person" means any individual, corporation, limited liability  
53 company, partnership, association, joint stock company, business trust,  
54 unincorporated organization or other entity.

55 (7) "Individual with a disability" means an individual (A) having a  
56 physical or mental impairment that substantially limits one or more of  
57 the major life activities of the individual, or (B) having a record of such  
58 an impairment.

59 (8) "Nonprofit corporation" means a nonprofit corporation  
60 incorporated pursuant to chapter 602 or any predecessor statutes  
61 thereto.

62 (b) It is found and determined that there is a serious need to help  
63 small contractors, minority business enterprises, nonprofit  
64 organizations and individuals with disabilities to be considered for  
65 and awarded state contracts for the construction, reconstruction or  
66 rehabilitation of public buildings, the construction and maintenance of  
67 highways and the purchase of goods and services. Accordingly, the  
68 necessity, in the public interest and for the public benefit and good, of  
69 the provisions of this section, sections 4a-60h to 4a-60j, inclusive, and  
70 sections 32-9i to 32-9p, inclusive, is declared as a matter of legislative  
71 determination. Notwithstanding any provisions of the general statutes  
72 to the contrary, and except as set forth herein, the head of each state  
73 agency and each political subdivision of the state other than a  
74 municipality shall set aside in each fiscal year, for award to small  
75 contractors, on the basis of competitive bidding procedures, contracts  
76 or portions of contracts for the construction, reconstruction or  
77 rehabilitation of public buildings, the construction and maintenance of  
78 highways and the purchase of goods and services. Eligibility of  
79 nonprofit corporations under the provisions of this section shall be

80 limited to predevelopment contracts awarded by the Commissioner of  
81 Economic and Community Development for housing projects. The  
82 total value of such contracts or portions thereof to be set aside by each  
83 such agency shall be at least twenty-five per cent of the total value of  
84 all contracts let by the head of such agency in each fiscal year,  
85 provided that neither: (1) A contract that may not be set aside due to a  
86 conflict with a federal law or regulation; or (2) a contract for any goods  
87 or services which have been determined by the Commissioner of  
88 Administrative Services to be not customarily available from or  
89 supplied by small contractors shall be included. [ except that the head  
90 of any such agency may set aside an amount based on the amount of  
91 all contracts not excluded from the calculation which are anticipated to  
92 be let in any fiscal year if the method of calculation for such year  
93 would result in a maximum value of contracts to be set aside of less  
94 than twenty-five per cent of the contracts anticipated to be let in such  
95 year or in a minimum value of contracts to be set aside of greater than  
96 twenty-five per cent of the contracts anticipated to be let in such year.]  
97 Contracts or portions thereof having a value of not less than  
98 twenty-five per cent of the total value of all contracts or portions  
99 thereof to be set aside shall be reserved for awards to minority  
100 business enterprises. Not less than fifteen per cent of the contracts set  
101 aside by each state agency pursuant to this subsection shall be  
102 awarded to small contractors who had gross revenues not exceeding  
103 five million dollars in the most recently completed fiscal year prior to  
104 such application.

105 (c) The head of any state agency or political subdivision of the state  
106 other than a municipality may, in lieu of setting aside any contract or  
107 portions thereof, require any general or trade contractor or any other  
108 entity authorized by such agency to award contracts, to set aside a  
109 portion of any contract for subcontractors who are eligible for set-aside  
110 contracts under this section. Nothing in this subsection shall be  
111 construed to diminish the total value of contracts which are required to  
112 be set aside by any state agency or political subdivision of the state  
113 other than a municipality pursuant to this section.

114 (d) The heads of all state agencies and of each political subdivision  
115 of the state other than a municipality shall notify the Commissioner of  
116 Administrative Services of all contracts to be set aside pursuant to  
117 subsection (b) or (c) of this section at the time that bid documents for  
118 such contracts are made available to potential contractors.

119 [(e) In no case shall the Commissioner of Administrative Services  
120 recommend, nor shall any small contractor be awarded, any such  
121 contract or contracts, the total amount of which exceeds ten million  
122 dollars in any one fiscal year.]

123 [(f)] (e) The awarding authority shall require that a contractor or  
124 subcontractor awarded a contract or a portion of a contract under this  
125 section perform not less than fifteen per cent of the work with the  
126 workforces of such contractor or subcontractor and shall require that  
127 not less than twenty-five per cent of the work be performed by  
128 contractors or subcontractors eligible for awards under this section. A  
129 contractor awarded a contract or a portion of a contract under this  
130 section shall not subcontract with any person with whom the  
131 contractor is affiliated. No person who is affiliated with another person  
132 shall be eligible for awards under this section if both affiliated persons  
133 considered together would not qualify as a small contractor or a  
134 minority business enterprise under subsection (a) of this section. The  
135 awarding authority shall require that a contractor awarded a contract  
136 under this section submit, in writing, an explanation of any  
137 subcontract entered into with any person that is not eligible for awards  
138 under this section prior to the performance of any work pursuant to  
139 such subcontract.

140 [(g)] (f) The awarding authority may require that a contractor or  
141 subcontractor awarded a contract or a portion of a contract under this  
142 section furnish the following documentation: (1) A copy of the  
143 certificate of incorporation, certificate of limited partnership,  
144 partnership agreement or other organizational documents of the  
145 contractor or subcontractor; (2) a copy of federal income tax returns  
146 filed by the contractor or subcontractor for the previous year; and (3)

147 evidence of payment of fair market value for the purchase or lease by  
148 the contractor or subcontractor of property or equipment from another  
149 contractor who is not eligible for set-aside contracts under this section.

150 [(h)] (g) The awarding authority or the Commissioner of  
151 Administrative Services or the Commission on Human Rights and  
152 Opportunities may conduct an audit of the financial, corporate and  
153 business records and conduct an investigation of any small contractor  
154 or minority business enterprise which applies for or is awarded a  
155 set-aside contract for the purpose of determining eligibility for awards  
156 or compliance with the requirements established under this section.

157 [(i)] (h) The provisions of this section shall not apply to any state  
158 agency or political subdivision of the state other than a municipality  
159 for which the total value of all contracts or portions of contracts of the  
160 types enumerated in subsection (b) of this section is anticipated to be  
161 equal to ten thousand dollars or less.

162 [(j)] (i) In lieu of a performance, bid, labor and materials or other  
163 required bond, a contractor or subcontractor awarded a contract under  
164 this section may provide to the awarding authority, and the awarding  
165 authority shall accept a letter of credit. Any such letter of credit shall  
166 be in an amount equal to ten per cent of the contract for any contract  
167 that is less than one hundred thousand dollars and in an amount equal  
168 to twenty-five per cent of the contract for any contract that exceeds one  
169 hundred thousand dollars.

170 [(k)] (j) (1) Whenever the awarding agency has reason to believe that  
171 any contractor or subcontractor awarded a set-aside contract has  
172 wilfully violated any provision of this section, the awarding agency  
173 [may] shall send a notice to such contractor or subcontractor by  
174 certified mail, return receipt requested. Such notice shall include: (A) A  
175 reference to the provision alleged to be violated; (B) a short and plain  
176 statement of the matter asserted; (C) the maximum civil penalty that  
177 may be imposed for such violation; and (D) the time and place for the  
178 hearing. Such hearing shall be fixed for a date not earlier than fourteen  
179 days after the notice is mailed. The awarding authority shall send a

180 copy of such notice to the Commission on Human Rights and  
181 Opportunities.

182 (2) The awarding agency shall hold a hearing on the violation  
183 asserted unless such contractor or subcontractor fails to appear. The  
184 hearing shall be held in accordance with the provisions of chapter 54.  
185 If, after the hearing, the awarding agency finds that the contractor or  
186 subcontractor has wilfully violated any provision of this section, the  
187 awarding agency shall suspend all set-aside contract payments to the  
188 contractor or subcontractor and may, in its discretion, order that a civil  
189 penalty not exceeding ten thousand dollars per violation be imposed  
190 on the contractor or subcontractor. If such contractor or subcontractor  
191 fails to appear for the hearing, the awarding agency may, as the facts  
192 require, order that a civil penalty not exceeding ten thousand dollars  
193 per violation be imposed on the contractor or subcontractor. The  
194 awarding agency shall send a copy of any order issued pursuant to  
195 this subsection by certified mail, return receipt requested, to the  
196 contractor or subcontractor named in such order. The awarding agency  
197 may cause proceedings to be instituted by the Attorney General for the  
198 enforcement of any order imposing a civil penalty issued under this  
199 subsection.

200 [(l)] (k) On or before January 1, 2000, the Commissioner of  
201 Administrative Services shall establish a process for certification of  
202 small contractors and minority business enterprises as eligible for  
203 set-aside contracts. Each certification shall be valid for a period not to  
204 exceed two years. [The] Any paper application for certification shall be  
205 no longer than six pages. [Annually, the commissioner shall print a]  
206 The Department of Administrative Services shall maintain on its web  
207 site an updated directory of small contractors and minority business  
208 enterprises certified under this section. [State agencies shall be  
209 provided with updated directory information quarterly.]

210 [(m)] (l) On or before [September 30, 1995] August 30, 2007, and  
211 annually thereafter, each state agency and each political subdivision of  
212 the state other than a municipality setting aside contracts or portions of

213 contracts shall prepare a report establishing small and minority  
214 business set-aside program goals for the twelve-month period  
215 beginning July first in the same year. Each such report shall be  
216 submitted to the Commissioner of Administrative Services, the  
217 Commission on Human Rights and Opportunities and the  
218 cochairpersons and ranking members of the joint standing committees  
219 of the General Assembly having cognizance of matters relating to  
220 planning and development and government administration and  
221 elections.

222 [(n)] (m) On or before November 1, 1995, and quarterly thereafter,  
223 each state agency and each political subdivision of the state other than  
224 a municipality setting aside contracts or portions of contracts shall  
225 prepare a status report on the implementation and results of its small  
226 business and minority business enterprise set-aside program goals  
227 during the three-month period ending one month before the due date  
228 for the report. Each report shall be submitted to the Commissioner of  
229 Administrative Services and the Commission on Human Rights and  
230 Opportunities. Any state agency or political subdivision of the state,  
231 other than a municipality, that does not achieve at least fifty per cent of  
232 its small contractor and minority business enterprise set-aside program  
233 goals by the end of the second reporting period in any twelve-month  
234 period beginning on July first shall provide a written explanation to  
235 the Commissioner of Administrative Services and the Commission on  
236 Human Rights and Opportunities detailing how the agency or political  
237 subdivision will achieve its goals in the final reporting period. The  
238 Commission on Human Rights and Opportunities shall: (1) Monitor  
239 the achievement of the annual goals established by each state agency  
240 and political subdivision of the state other than a municipality; and (2)  
241 prepare a quarterly report concerning such goal achievement. The  
242 report shall be submitted to each state agency that submitted a report,  
243 the Commissioner of Economic and Community Development, the  
244 Commissioner of Administrative Services and the cochairpersons and  
245 ranking members of the joint standing committees of the General  
246 Assembly having cognizance of matters relating to planning and  
247 development and government administration and elections. Failure by



248 any state agency or political subdivision of the state other than a  
249 municipality to submit any reports required by this section shall be a  
250 violation of section 46a-77.

251 [(o)] (n) On or before January 1, 2000, and annually thereafter, the  
252 Department of Administrative Services shall establish a precertification  
253 list of small contractors and minority business enterprises who have  
254 established a principal place of business in the state but have not  
255 maintained such place of business for one year and are not in the  
256 directory prepared pursuant to subsection [(l)] (k) of this section. An  
257 awarding agency may select a small contractor or minority business  
258 enterprise from such precertification list only after such awarding  
259 agency makes a good faith effort to find an eligible small contractor or  
260 minority business enterprise in the directory and determines that no  
261 small contractor or minority business enterprise is qualified to perform  
262 the work required under the contract.

263 [(p)] (o) Nothing in this section shall be construed to apply to the  
264 four janitorial contracts awarded pursuant to subsections (b) to [(e)]  
265 (d), inclusive, of section 4a-82.

266 Sec. 2. (NEW) (*Effective July 1, 2007*) Not later than March 1, 2008, the  
267 Commissioner of Administrative Services shall adopt regulations, in  
268 accordance with chapter 54 of the general statutes, that establish size  
269 standards for small contractors, as defined in section 4a-60g of the  
270 general statutes, as amended by this act, in each business sector in  
271 which such contractors, subcontractors, manufacturers or service  
272 companies primarily operate.

273 Sec. 3. Subsection (b) of section 4a-60h of the general statutes is  
274 repealed and the following is substituted in lieu thereof (*Effective July*  
275 *1, 2007*):

276 (b) The commissioner shall adopt regulations in accordance with the  
277 provisions of chapter 54 to carry out the purposes of sections 4a-60g to  
278 4a-60j, inclusive. Such regulations shall include (1) provisions  
279 concerning the application of the program to individuals with a

280 disability; (2) guidelines for a legally acceptable format for, and content  
 281 of, letters of credit authorized under subsection [(j)] (i) of section 4a-  
 282 60g, as amended by this act; (3) procedures for random site visits to the  
 283 place of business of an applicant for certification at the time of  
 284 application and at subsequent times, as necessary, to ensure the  
 285 integrity of the application process; and (4) time limits for approval or  
 286 disapproval of applications.

287 Sec. 4. Section 10-29a of the general statutes is amended by adding  
 288 subdivision (52) as follows (*Effective from passage*):

289 (NEW) (52) The Governor shall proclaim the month of May to be  
 290 Women Owned Business Month to honor the contribution that women  
 291 owned businesses make to our state. Suitable exercises shall be held in  
 292 the State Capitol and elsewhere as the Governor designates for the  
 293 observance of the month.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2007</i>	4a-60g
Sec. 2	<i>July 1, 2007</i>	New section
Sec. 3	<i>July 1, 2007</i>	4a-60h(b)
Sec. 4	<i>from passage</i>	10-29a

**APP**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

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**OFA Fiscal Note****State Impact:**

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Department of Administrative Services	GF - Cost	95,000	95,000
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	24,510	57,190

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

This bill makes several changes to the set-aside program for small contractors, minority business enterprises, individuals with disabilities and nonprofit corporations.

The bill makes changes to the definition of "small contractor," thus increasing the number of firms that will be eligible under the set-aside program. The bill raises the standard for what a "small business" is from \$10 million to \$15 million in annual gross revenues. The bill also includes individuals with mental impairments as qualified minority business enterprises.

Under the bill, DAS must adopt regulations establishing the size standards for contractors, subcontractors, manufacturers, and service companies.

DAS will need two positions, a Processing Technician (45,000<sup>1</sup>) and

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<sup>1</sup> The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated first year fringe benefit rate for a new employee as a percentage of average salary is 25.8%, effective July 1, 2006. The first year fringe benefit costs for new positions do not include pension costs. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The

an Accounts Examiner (50,000), to handle the significantly increased workload associated with the greater number of firms eligible for the set-aside program and to establish industry-based size standards.

The bill also eliminates obsolete language that created an alternative method for calculating the number of set-aside contracts at a time when the value of contracts to be set aside was a minimum of 15% and a maximum of 25% of the average of contracts awarded over three fiscal years. This provision has no fiscal impact.

The bill requires the governor to proclaim May as “Women Owned Business Month” to honor these businesses’ contributions to Connecticut. This provision has no fiscal impact.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

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SERS 2006-07 fringe benefit rate is 34.4%, which when combined with the non pension fringe benefit rate totals 60.2%.

**OLR Bill Analysis****sHB 5975*****AN ACT CONCERNING THE STATE SET-ASIDE PROGRAM AND  
DISPARITIES IN MINORITY CONTRACTING.*****SUMMARY:**

This bill makes changes to the set-aside program for small contractors, minority business enterprises, individuals with disabilities and nonprofit corporations, including which firms may be eligible for the program. It requires awarding agencies to, among other things (1) explain how they will meet their program goals in the future when they fail to do so, (2) allocate 15% of their set-aside contracts to firms grossing \$5 million or less in the most recently completed fiscal year, and (3) obtain a written explanation from contractors that enter into contracts with subcontractors that are ineligible for the program.

The bill eliminates obsolete language that created an alternative method for calculating the number of set-aside contracts at a time when the value of contracts to be set aside was a minimum of 15% and a maximum of 25% of the average of contracts awarded over three fiscal years.

The bill requires the governor to proclaim May as "Women Owned Business Month" to honor these businesses' contributions to Connecticut. Suitable exercises must be held at the Capitol and elsewhere.

Finally, the bill makes technical changes.

EFFECTIVE DATE: July 1, 2007, except for the provision establishing "Women Owned Business Month," which is effective upon passage.

**SET-ASIDE GOALS**

The law requires state agencies and political subdivisions, other than municipalities, to set aside 25% of the contracts they let for construction, goods, and services each year to small contractors, including minority business enterprises. It excludes (1) any contract for which a set-aside conflicts with federal law or regulations and (2) goods and services not customarily available from or supplied by small contractors.

The bill requires agencies and political subdivisions, other than municipalities, to submit reports by August 30, rather than September 30, outlining their set-aside goals for the year. Any agency or political subdivision that does not achieve at least 50% of its goals by the end of the second reporting period in any 12 months beginning on July 1 must give the Department of Administrative Services (DAS) and the Commission on Human Rights and Opportunities (CHRO) a detailed written explanation of how it will achieve its goals in the final reporting period.

#### **PROGRAM ELIGIBILITY**

Beginning July 1, 2007, the bill makes changes to the definition of “small contractor,” thus increasing the number of firms that may be eligible under the set-aside program. It does so by:

1. requiring firms to have the same ownership or management, rather than both, for at least one year before applying, thereby allowing those that have gone through ownership transfers to be eligible;
2. raising from \$10 million to \$15 million the maximum gross revenues allowed in the most recently completed fiscal year; and
3. including small contractors who are individuals with mental impairments, not just those with physical impairments, as qualified minority business enterprises.

The bill requires awarding agencies to reserve 15% of their total set-aside contracts for firms with gross revenues of \$5 million or less in the

most recently completed fiscal year before applying, just as the law requires them to reserve 25% for minority businesses enterprises.

It also removes a prohibition against the DAS commissioner awarding a small contractor a contract or contracts totaling more than \$10 million in a fiscal year.

Beginning July 1, 2008, the bill requires firms to meet a size standard for the business sector in which they primarily operate. By March 1, 2008, the DAS commissioner must adopt regulations establishing the size standards for contractors, subcontractors, manufacturers, and service companies.

#### **EXPLANATION FOR INELIGIBLE SUBCONTRACTORS**

The bill requires an agency that awards a set-aside contract to obtain from that contractor, before any work begins, a written explanation detailing any subcontract it has with a firm that is not eligible under the set-aside program. By law, a contractor that is awarded a set-aside contract, together with set-aside-eligible subcontractors, must perform at least 25% of the work done under the contract.

#### **NOTICE REQUIREMENTS**

The law permits awarding agencies, after notice and a hearing, to impose a civil penalty of up to \$10,000 on contractors or subcontractors who willfully violate the set-aside law. The bill requires, rather than allows, them to send notice to a contractor or subcontractor they suspect of such a violation. It also requires the awarding agency to send CHRO a copy of the notice. By law, the notice must inform the firm of the maximum civil penalty for the alleged violation, that there will be a hearing, and of its time and date, among other things.

#### **DIRECTORY OF CERTIFIED FIRMS**

The bill removes a requirement for DAS to print a directory of certified small contractors and minority business enterprises and provide updated copies to state agencies on a quarterly basis. Instead, it requires the department to maintain the updated directory on its website.

**BACKGROUND*****Legislative History***

The House referred the bill (File 499) to the Appropriations Committee, which reported a substitute eliminating a \$300,000 appropriation from the General Fund to CHRO to study disparities in minority contracting.

***Related Bills***

SB 530 (File 302) exempts regional planning organizations from the set-aside program.

sSB 1020 (File 490) establishes a separate set-aside program for disabled veteran contractors that mirrors the existing program for small contractors and minority business enterprises.

sHB 5993 (File 500) makes similar changes to the set-aside program including increasing the number of firms that may be eligible and requiring contractors to offer an explanation when they enter into a subcontract with an ineligible subcontractor. It also requires DAS to conduct a study concerning size standards.

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 13      Nay 0      (03/28/2007)

Appropriations Committee

Joint Favorable Substitute

Yea 39      Nay 2      (04/30/2007)